



HaRav Shaul Israeli zt"l
Founder and President

HEMDAT YAMIM

המדת ימים

PARASHAT HASHAVUAH

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Concern for Whom?

Harav Yosef Carmel

During the 'peace treaty' that Yaakov entered with Lavan, Lavan inserted a strange condition that obligated Yaakov not to "torment my daughters or take another wife in addition to my daughters" (Bereishit 31:50). While we can understand his wanting those results, why would he suspect that Yaakov would not be a good husband? Yaakov had worked so hard and with such integrity to gain Lavan's permission to marry them! He had just made sure to receive their permission to return to the Land of his Fathers – despite an explicit divine decree to do so. Even if one will claim that Lavan was concerned with the plight of Leah, who after all, Yaakov had not planned to marry, it does not explain why he spoke in the plural about his daughters. Leah and Rachel both described the feelings that it was their father who had mistreated them, taking advantage of Yaakov's eagerness to marry them and withholding the wages that he/they had earned. So who is the one who should be concerned about whom? It is true that the *gemara* (Yoma 77a) and several *Rishonim* understood Lavan's concern as sincere, but after asking forgiveness of their opinions, we would like to suggest another scenario.

We have discussed in the past that Lavan had turned Yaakov into a captive of sorts, taking advantage of Yaakov's fleeing from Eisav as a way to take away his freedom. By escaping from Lavan's house with his wives, Yaakov was standing up to Lavan and declaring his independence. When Hashem appeared to Lavan and informed him that He would not allow Lavan to continue imposing his will on Yaakov, Lavan decided that it served his interests to enter into a treaty with Yaakov.

We have also seen that in the time of Tanach (and unfortunately still today in certain places), one of the ways to show one's sovereignty over a conquered region was to distribute the women of the conquered nation among the leader and soldiers of the conquering nation. These women would be taken in addition to men's own wives. On the basis of this background, we can understand Lavan's condition as follows. His concern was not for his daughters, whom he used for deception, switching them on the night of Yaakov's wedding to Rachel. Rather, he was concerned that Yaakov would come back to Aram and wage war against the people among whom he was a central leader. This would be accompanied, in his view, by Yaakov taking additional wives. In truth, if Rachel and Leah were to receive real freedom, it was by escaping from their father and his absurd treatment of their family.

To complete the freedom, though, Yaakov had to deal with the dangers posed by Eisav and his angel. When Yaakov stood up to the angel, he was given the name *Yisrael*, indicating that he had earned his independence for himself and his offspring.

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Ask the Rabbi

Giving an Envelope on Shabbat to Use for Donations

by Rav Daniel Mann

Question: It is the practice in some *shuls* to give a self-addressed envelope to one who gets an *aliya* to mail his pledge after Shabbat. Is the envelope *muktzeh*?

Answer: Each congregation's rabbi should set policy on such halachic issues, but the issue is worth discussing.

Such an envelope is *muktzeh*, at least as a *kli shemelachto l'issur* (= *ksmli*), a utensil whose main purpose is for something forbidden on Shabbat (Mishna Berura 308:10). After all, it is meant for putting in money and often subsequently sealing before mailing, which are forbidden on Shabbat. If it is *muktzeh machamat chesron kis* (one would refrain from using it for a secondary purpose), it would be forbidden to move it at all (Shulchan Aruch, Orach Chayim 308:1). However, since such envelopes are usually plentiful and inexpensive enough to not qualify, one can move them while they are fulfilling a use that is unrelated to something forbidden (ibid. 3).

Let us analyze how this donation-related envelope is used. One could suggest that its use as a harmless preparation for a *mitzva* after Shabbat is as valid as a simple purpose on Shabbat. However, those who posit that *tefillin* are *ksmli* do not allow one to move them so he can put them on on Sunday (see Magen Avraham 308:11; Taz 308:3). One could claim that the envelope's permitted purpose on Shabbat is so the potential donor will not forget his opportunity. However, not forgetting is significant only if attached to a donation and therefore there is no positive gain on Shabbat of the *oleh* taking the envelope.

I heard a claim that I cannot understand in the name of a *talmid chacham* – the envelope is not *muktzeh* at all either because it is also a reminder or because it can be used for putting in permitted things. However, a *ksmli* is always something that can be used for something permitted, just that is not its main purpose, and still one is permitted to move it only while he is using it for a positive, active permitted use. Even if the *shul* says they are using it actively as a reminder, this will not help the person who takes it home without necessarily being interested in that.

Another problem that needs discussion is *hachana*, preparation from Shabbat to weekday. *Hachana* is a problem even if one does a totally permitted act, when it is done for the needs of weekday. Here, giving the envelope is only useful so that the *shul* will get the donation later. A strong precedent for this application of *hachana* is the halacha that one may not bring wine on Shabbat to the place where it will be needed for *Havdala* on *Motzaei Shabbat* because of *hachana* (Magen Avraham 667:3; Mishna Berura 667:5). Therefore it is forbidden for the *oleh* to take home the envelope even if we can solve the problem of *muktzeh* and even if there is an *eiruv*. We see that the fact that it will be used for a *mitzva* does not overcome the problem. The Chayei Adam (153:6) does permit (for the purpose of a *mitzva* and when there is no other choice) bringing the wine when there is time to drink it on Shabbat. The leniency is because it is not noticeable that it is being done for after Shabbat. In our case, not only are there other options, but it is also clear that the envelope is meant for use only after Shabbat.

An idea that solves both problems is to give the envelope a permitted purpose by putting a *dvar Torah* or other usable memento into the envelope. Then the *ksmli* is being used for a permitted purpose and is permitted. Taking the envelope and the *dvar Torah* home in it is also not *hachana* because the two together have a purpose on Shabbat – the page for reading and the envelope for storing (Yalkut Yosef 308:12). One problem is that the recipient might remove the *dvar Torah* from the envelope and not put it back, in which case the envelope would no longer be in use for a permitted purpose. Another suggestion is to attach the two together so that one would be carrying the envelope along with the *dvar Torah* (Nachalat Yisrael (Krauss) pg. 236).

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Ein Ayah

(from the writings of Harav Avraham Yitzchak Hakohen Kook, z.t.l.)

The Greatness of Man and its Price

(condensed from Ein Ayah, Berachot 9:194-5)

Gemara: [According to one opinion, the *pasuk*, “You created me, back and front” (Tehillim 139:5) refers to the creation of man as a two-sided creature (Adam and Chava).] According to the other opinion, what does this *pasuk* refer to? Man was created at the end of creation, and he is in the fore in regard to *puranut* (tragedy). I understand that he is at the end of creation, as he was created only close to Shabbat, but what does it mean that he is in the fore in regard to *puranut*? If it is in regard to the *puranut* of the snake, doesn't the *baraita* say: “Regarding greatness, we begin with the great, and regarding problems, we begin with the small”? ... Rather it refers to the *puranut* of the flood, where the Torah describes the people being destroyed before the animals (Bereishit 7:23).

Ein Ayah: We see in creation that the higher the level of the creature the greater the extent to which its life force is centralized. For this reason, the more advanced species are more vulnerable than the lower ones. That is why one can see a lowly species cut into pieces and yet remain alive. Therefore, it follows that man, the crown of the creation, has a very exact centrality of his life force.

The level of the creations corresponds to the order in which the Torah tells of their creation. The later the mention, with man being the last, the more important the creation and the stronger its life force. The idea is that the centralization of the life force is greater when it builds on previous, more individualistic forces. Man was created such that his spiritual powers should be focused on one thing, and therefore the centralization is at the root of his existence. When man's evil inclination brings him to lose his spiritual center and allow him to wander to wherever his temporal desires take him, it robs him of his right to live. This is different from lower beings, which have a right to exist even if they lack a valued goal, because more is not expected of them. After all, man was created last, and eventually he is to unite all of creation for one lofty purpose. However, he can keep this role only when he stays on the straight and proper path.

Regarding *puranut*, we must distinguish between a lowering of one's level and his total demise. People's levels extend from those of the highest of levels down to the people who are beneath them. When there is a need to lower the level of the collective, the person on top does not feel the deterioration right away because he still retains some prestige based on the status which he had previously. Those beneath him, though, who receive much of their stature from the ones above them and have little of their own, will feel the deterioration right away. This is because people will first lose the ability to have a positive impact on others and later lose the ability to hold on to their own level. Therefore, in regard to the sin involving the snake, where the question was only one of losing one's level, the *puranut* was handed out from the lower level, the snake, and then preceded on to Adam.

However, the matter is different in regard to the destruction of the flood, which involved the loss of life. In this respect, the higher the level, the more one's life is centralized, as we have seen. Therefore, once the problem impacted on man's central essence, his demise came about more quickly. That is why man is described as dying first.

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Disqualifying Judges

(from Hemdat Mishpat, Ki Tisa 5773)

The question of what disqualifies a judge is intrinsically related to the question of what is required of a judge and is expected of the process of adjudication. It is also related to the matter of how not only to judge righteously but present the system of judgment before the broad public.

In the State of Israel's official courts, hundreds of requests are made every year to disqualify judges from sitting in judgment in a specific case. First the request is made of the judge in question to determine his opinion on the matter. If the judge decides that he is fit to sit but a party appeals the decision, the issue is decided upon by the President of the Supreme Court. A study (Yigal Merzel, for the Lawyers' Association) found that of approximately 180 appeals a year, less than 10% are accepted.

The decisions on the requests to disqualify have dealt with two types of issues: 1. the appearance of impropriety; 2. the possibility of an objective conflict of interest. Over the last several years, the first issue has declined as a serious factor, thus reducing the number of disqualifications, and the objective factor has grown in prominence. There are even times when the judge asks to disqualify himself and the President of the Supreme Court does not allow him to do so, preferring the objective prospects of justice over the judge's subjective feeling of comfort to hear the case.

What does halacha have to say on the matter? Certainly, anyone who is disqualified from witnessing is disqualified from being a judge (Shulchan Aruch, Choshen Mishpat 7, 9). This includes relatives of the litigants and people who are unfit because of sins they have committed. Another situation is when the judge is impacted in some way by the outcome of the litigation. The Rambam stresses that even if the interest is remote, one cannot be a witness and certainly not a judge. This is a more stringent level for qualification than the Israeli law prescribes (*Chok Beit Mishpat 77*.a refers to a "significant monetary or personal interest").

In halacha there are differences between the standards of impartiality for a witness and for a judge. One is allowed to testify about a case that involves his friend or his enemy (Shulchan Aruch, CM 33) but cannot serve as a judge for such a case (ibid. 11:7). The logic is that testimony is about plain facts, and we do not expect that someone will lie because he likes or dislikes someone. In contrast, a judge has to use finer judgment, which is not simply factual, and it is possible for one to subconsciously be influenced by feelings (S'ma 33:1). The *gemara* (Ketubot 105) tells of *Amoraim* who secluded themselves from judging based on small favors that one side did for them. One of them subsequently noticed that he was thinking about arguments that "his side" could have made, and declared: "How cursed are those who take bribes ... for I did not take a bribe and still my thought process was affected."

As mentioned, the secular courts are not as strict as this and apparently rely on the judge's ability to overcome his inclinations based on his cognitive powers. Halacha looks more at the human limitations of the judges and is willing to be more demanding and less trusting.

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